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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. **2010-342**

11 **VICTORIA LYNN MIOTKE**
12 **1528 English Drive**
13 **San Jose, CA 95129**

A C C U S A T I O N

14 **Registered Nurse License No. 418318**
Public Health Nurse Certificate No. PHN 43212

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about August 31, 1987, the Board of Registered Nursing issued Registered
23 Nurse License Number 418318 to Victoria Lynn Miotke (Respondent). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on April 30, 2011, unless renewed.

26 3. On or about April 5, 1988, the Board of Registered Nursing issued Public Health
27 Nurse Certificate Number PHN 43212 to Victoria Lynn Miotke (Respondent). The Public Health
28 Nurse Certificate was in full force and effect at all times relevant to the charges brought herein

and will expire on April 30, 2011, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY AND REGULATORY PROVISIONS

5. Section **726** of the Code states:

The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

6. Section **2750** of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section **2764** of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

8. Section **2761** of the Code states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing

functions.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

9. Section **2762** of the Code states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

10. California Code of Regulations, title 16, section **1442**, states:

As used in Section 2761 of the code, "gross negligence" includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

11. California Code of Regulations, title 16, section **1443**, states:

As used in Section 2761 of the code, "incompetence" means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct)

3 17. Respondent is subject to disciplinary action under section 2761(a) of the Code in that
4 she acted unprofessionally, as set forth above in paragraphs 13-16.

5 **SECOND CAUSE FOR DISCIPLINE**

6 (Gross Negligence/Incompetence)

7 18. Respondent is subject to disciplinary action under section 2761(a)(1) of the Code in
8 that she acted with gross negligence and incompetence, as set forth above in paragraphs 13-16.

9 **THIRD CAUSE FOR DISCIPLINE**

10 (Unsafe Use of Controlled Substances and Alcohol)

11 19. Respondent is subject to disciplinary action under section, 2761, subsections (a) and
12 (d), and 2762(b) of the Code in that she used a controlled substance and alcohol in a manner
13 dangerous or injurious to herself, any other person, or the public or to the extent that such use
14 impaired her ability to conduct with safety to the public the practice authorized by his or her
15 license, as set forth above in paragraphs 13-16.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 (Sexual Misconduct With Patient)

18 20. Respondent is subject to disciplinary action under section 726 of the Code in that she
19 engaged in sexual abuse, misconduct or relations with a patient, as set forth above in paragraphs
20 13-16.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Registered Nursing issue a decision:

24 1. Revoking or suspending Registered Nurse License Number 418318, issued to
25 Victoria Lynn Miotke;

26 2. Revoking or suspending Public Health Nurse Certificate Number PHN 43212, issued
27 to Victoria Lynn Miotke;

28 3. Ordering Victoria Lynn Miotke to pay the Board of Registered Nursing the

1 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
2 Professions Code section 125.3;

3 4. Taking such other and further action as deemed necessary and proper.

4 DATED: _____

1/21/10

for

Stacie Berum

LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant